



THE CONFEDERATION OF EUROPEAN COMMUNITY
CIGARETTE MANUFACTURERS LIMITED.

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FROM THE OFFICE OF THE CHAIRMAN

BY TELEFAX

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TO: Mr. D. G. Heywood/Mr. P. M. Bingham (B.A.T.)
Mr. P. M. Wilson/Dr. R. R. Boxall (Gallaher)
Mr. S. T. Painter/Mr. D. Swan (Imperial)
Mr. W. Thoma/Mr. M. D. Horst/
Mr. I. C. Sargeant (Philip Morris)
Mr. L. W. Staby/ Dr. C. Walther (Reemtsma)
Mr. K. D. Langner (RJR Intl.)
Mr. W. Dembach (RJR - Cologne)
Mr. J. W. Webb (R.I.S. - Denham)
Mr. J. G. de Vos (RIS - Turmac)

FROM: John Lepere

DATE: 30 August 1990.

SUBJECT: Proposed Court proceedings before the German
Constitutional Court
C.E.C.C.M. Board Agenda B2 (c) - 5 September 1990.

During a meeting of the Advertising Study Group held on 14 August 1990, it was reported that several member companies of the VdC are actively considering the initiation of court action before the German Constitutional Court to question the validity of implementation in Germany of the provisions of the EEC Labelling Directive concerning the mandatory specific health warnings for cigarettes. Having regard to the fundamental rights guaranteed by the German Constitution, the key issue is the extent to which the German Constitutional Court sees itself as having jurisdiction over the implementation in Germany of EEC secondary legislation, in so far as the Constitution guarantees fundamental rights; there is case law precedent in which the Constitutional Court has affirmed its jurisdiction, pending the clear application by the European Court of Justice of the fundamental rights guaranteed in the European Convention on Human Rights.

Procedurally, the case now under consideration is quite different from that which the Board previously considered; no action before the European Court of Human Rights is now contemplated, nor could such a case arise from the proposed

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litigation in Germany.

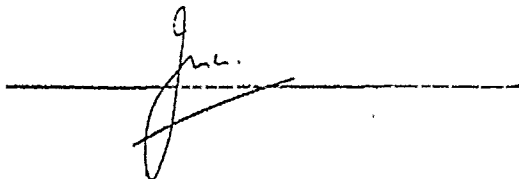
The litigation now proposed, should it succeed, would have obvious relevance also to the validity of implementing in Germany the key provisions of any EEC directive on tobacco advertising on any of the lines so far mooted, should such a directive be adopted.

The members of the Study Group unanimously acknowledged that success in the proposed litigation would be of enormous benefit in effectively countering the spread and severity of anti-tobacco restrictions throughout Europe. They are therefore of the view that the case should not lightly be dismissed. The decision on whether or not to proceed with the litigation is one that must be taken by each individual company within the VdC, each of which is a potential plaintiff. Nevertheless, the Advertising Study Group has requested that the Board of C.E.C.C.M. should make its views known on the desirability or otherwise of proceeding with the proposed litigation.

It seems that the German authorities expect the manufacturers to open proceedings and that they support such action; the view has been expressed to me that any decision not to proceed would indeed destroy the credibility of the industry with the German authorities. Directors will no doubt take account of this aspect of the matter.

Herewith is a short briefing note (and relevant enclosures), prepared by Ernst Bruckner of the VdC at the request of the Advertising Study Group. Whilst the enclosures are in German, I also enclose a translation of the relevant sections (i.e. of the first para. of the Answer to the Parliamentary Question and of page 13 of the Non-Smoking Promotion Programme). It is claimed that this evidence will virtually exclude any possibility that the alleged causal relationship between smoking and lung cancer or heart disease might be discussed or ruled on in the course of the proceedings.

Kindest regards.

A handwritten signature, possibly "J. H.", is written over a horizontal line.

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